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By ECF

January 20, 2022

Honorable Gabriel W. Gorenstein
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

In Re: *New York City Policing During Summer 2020 Demonstrations*,
No. 20 Civ. 8924 (CM) (GWG)
This filing is related to all cases

Your Honor:

I am a Senior Counsel in the Office of Georgia M. Pestana, Corporation Counsel of the City of New York and I am among counsel for the defense in the above-referenced matter. I write in accordance with Your Honor's January 14th, 2022 Memorandum Order (Dkt #352) to respectfully respond to plaintiffs' January 6, 2022 letter motion and advise the Court of recent developments.

On January 19, 2022 the undersigned met and conferred with Remy Green, counsel for plaintiffs. Mx. Green and myself reach a number of agreements regarding the parameters of the documents which will be produced, and a time frame in which to produce them. We also spoke about plaintiffs' priorities concerning which of the requested documents they consider most important to possess before the upcoming depositions, which include deposition transcripts of higher-ranking officers and the corresponding exhibits from lawsuits stemming out of prior protests. The parties also discussed potential confidentiality concerns, which we resolved, and potential burdensomeness issues. The parties agreed that responsive documents would be provided by January 28, 2021, along with more detailed objections regarding documents defendants will not or cannot produce.

There are two areas where the parties disagree, however. First, plaintiffs seek documents dating as far back as the 2002 WEF demonstrations, while defendants have agreed to produce documents from the 2004 RNC demonstrations and more recent, which include documents and information that may go back to 2003 regarding the planning for the RNC. Although the WEF demonstrations were two years prior to the RNC, which plaintiffs argue does not place too much of an additional burden on defendants, burdensomeness is only part of the point. When the parties began to discuss production of materials related to prior protests, plaintiffs cited to Judge

McMahon's Order on defendants' motion to dismiss, which specifically noted that there is a dispute over whether "there were differences between the BLM protest of 2020 and the protests that took place in 2003, 2004, and 2011" and resolving that dispute will ultimately turn on "the sufficiency of the evidence." ECF 191 at 21-22. Similarly, the decision explains the relevance of reports about the tactics lead by Chief Monahan at the RNC (id. at 21), of NYPD's handling of after-action reports in the wake of litigation over the RNC (id. at 24-25), and "kettling that took place as long ago as 2003 and 2004 during large-scale protests" (id. at 18). The WEF demonstrations took place in 2002, not a series of demonstrations contemplated by Judge McMahon as possibly having relevance. As such, defendants do not believe documents from as far back as 2002 are relevant to plaintiffs' claims in these cases.

The other disagreement is regarding court-ordering the date by which defendants will provide the requested discovery. Defendants have assured plaintiffs that they will provide the requested documents, to the extent possible, on or before January 28, 2022. Many of the requested documents are quite old, up to 20 years old. To the extent they still exist, they may not be readily available to produce. It is respectfully submitted that defendants should not be subject to an order to produce documents which it may be impossible to produce in little more than a week. Defendants commit to producing as much as possible by January 28, without the necessity of a Court Order.

Based upon the forgoing Defendants respectfully request that Plaintiffs' motion be denied.

Thank you for your consideration herein.

Respectfully submitted,

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cc: ALL COUNSEL (via ECF only)